

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
PETITION FOR
REHEARING**

77 2049

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

calendar no. 326

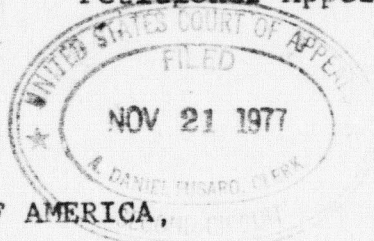
THOMAS LENTINI,

Petitioner-Appellant

v

UNITED STATES OF AMERICA,

Respondent-Appellee



PETITION OF APPELLANT FOR A
RE-HEARING RULE 40 F.R.A.P.

The Appellant submits this Petition for a Re-hearing pursuant to Rule 40 Federal Rules of Appellate Procedure on the ORDER of this Court affirming the District Court's denial of the Appellant's Motion to Vacate Sentence (SEE EXHIBIT I ATTACHED).

The basis for this Petition for a Re-hearing is shown by the ORDER OF THE THREE JUDGES, stating in pertinent part, as follows:

".....appellant's argument is foreclosed by his

failure to submit affidavits signed by himself and his attorney swearing that he was unaware and uninformed of the parole provisions at the time the plea was entered and would have acted differently had he known them."

".....Appellant's failure to produce an affidavit from his attorney to this effect dispenses with the need for us to address this allegation."

Consequently, this Court is stating that the relief is denied the Appellant based solely on: (1) His status as an indigent; (2) His failure to submit his Motion procedurally correct with the submission of an Affidavit of his attorney and himself.

(1) Due to the Appellant being an indigent he was precluded from securing the services of competent counsel to assist him in the proper presentation of his Motion to Vacate Sentence. This status further precluded him from securing an affidavit of his counsel at the time the plea was submitted, since counsel was reluctant to expend his services to assist an indigent prisoner. This matter could have been resolved at an Evidentiary Hearing whereat a subpoena could have been issued requiring counsel to submit under oath to questions relevant to the Appellant's understanding at the time of the plea submission.

(2) Higher Courts have held that pro se applications should be treated with tolerance as to improper techniques or errors in their pleadings. See the rule enunciated by

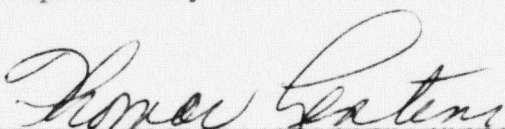
the Supreme Court in Haines v. Kerner, 404 U.S. 519;
92 S.Ct. 594, 30 L.Ed. 2d 652 (1972), wherein the Court
stated that pro se complaints are to be held to less strin-
gent standards than formal pleadings drafted by lawyers.
See further the holdings in Covington v. Cole, 528 F.2d
1365, 1373:

"....We recognize that prisoner complaints often
seem annoying and insubstantial and that the vol-
ume of such complaints faced by most district courts
would try the patience of Job. Job-like patience
however, should be the judicial benchmark in this
area. Technical rigidity in reviewing pleadings
must be eschewed, and we must remain extremely tol-
erant of the juristically unlearned as they seek
to articulate their belief that they have suffered
deprivations of constitutional rights."

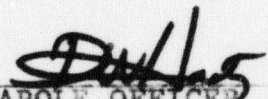
THEREFORE, the Appellant moves the court to re-con-
sider their ORDER within the guidelines set forth in the
above cases.

Respectfully submitted,

STATE OF GEORGIA)
: ss
COUNTY OF FULTON)

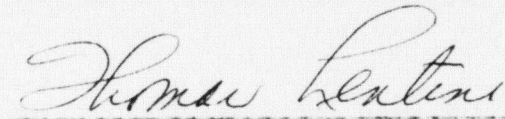

Thomas Lentini, Appellant Pro Se

SUBSCRIBED TO AND SWORN BEFORE ME
THIS 11 DAY OF NOVEMBER, 1977.


PAROLE OFFICER

CERTIFICATE OF SERVICE

I, HEREBY CERTIFY, that I am the Appellant in the foregoing petition for a re-hearing and that I have served a copy on the United States Attorney for the Southern District of New York, Foley Square, U. S. Courthouse, New York, New York 10007, by mailing said copy in the United States Mails by CERTIFIED MAIL-RETURN RECEIPT REQUESTED this- _____ day of November, 1977.


Thomas Lantini, Appellant